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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,259	01/10/2002	Bryan Rennecamp	RCP 6014	8444

321 7590 09/24/2003

SENNIGER POWERS LEAVITT AND ROEDEL  
ONE METROPOLITAN SQUARE  
16TH FLOOR  
ST LOUIS, MO 63102

EXAMINER
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LOPEZ, CARLOS N

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 09/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

10/044,259

Applicant(s)

RENNECAMP, BRYAN

Examiner

Carlos Lopez

Art Unit

1731

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: 11.

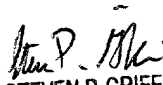
Claim(s) rejected: 1-10 and 12-14.

Claim(s) withdrawn from consideration: 15-28.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Continuation of 2. NOTE: The newly added limitation "which distance is greater than the lid width" which follows "wherein the pipe receptacle opening is a distance from the smoking material receptacle opening" requires further consideration and search. Additionally, all the dependent claims newly require a pivotal lid due to the change in dependency thereof. This raises new issues requiring further consideration and search.

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's arguments filed 9/02/03 have been fully considered but they are not persuasive. Applicant argues the following:  
Moreover, independent claims are drafted to recite only the points of novelty; they are not drafted to recite every feature of the invention. Accordingly, that claim 2 (and the rephrasing of claim 2 in column 3) lacks a feature such as the front recess only indicates Hill did not think his front recess was required for novelty. In view of these facts, in combination with the facts that a) all of Hill's figures show a third recess; b) Hill's Description describes only embodiments with a third recess; and c) Hill's column 3, lines 18-32 in the summary is simply a procedural summary of claim 2 and cannot fairly be taken to be describing a distinct embodiment not described in the "Description," applicant respectfully requests further reconsideration of applicant's claim 1. The central issue here is what would one skilled in the art learn from Hill. With all due respect, the conclusion asserted by the PTO in this regard is a hyper-literal reading of the reference which flies in the face of the fair, practical teaching of Hill. MPEP 2142.02 and fundamental fairness require that the reference must be viewed "as a whole" for what it fairly teaches to one of ordinary skill in the art. Applicant respectfully submits that Hill only teaches an embodiment having a front recess.  
Considering that Hill's claim 2 lacks a third recess, and the cited prior art clearly envisages Hill's smoking system without a third recess (Non Patent Literature Tobacco Taster Smoking) it is reasonable to conclude that Hill's claim 2 encompasses an embodiment having no front recess. Additionally applicant argues that claim 2 includes a third recess in view of claims 3-4. Claim 2 does not recited a third recess and incorporation of a limitation based on interpretation of its dependent claims can't be made. However, it is reasonable to conclude that claims 3-4 include a third recess but not claim 2. Furthermore, the prosecution of the Hill patent is irrelevant in the instant application.

  
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